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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

UNITED STATES OF AMERICA and
THE STATE OF OREGON,

Plaintiffs,

v.

CITY OF MILLERSBURG, OREGON

Defendant.

CIVIL ACTION NO.

CONSENT DECREE

UNITED STATES ATTORNEY
DISTRICT OF OREGON
888 SOUTHWEST 5TH AVENUE, SUITE 1000
PORTLAND, OREGON 97204-2024

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I. BACKGROUND

A. On April 4, 1997, the United States, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of Oregon ("State") by and through the Director of the Oregon Department of Environmental Quality ("DEQ"), filed a complaint against Teledyne Wah Chang Albany ("Teledyne"), the assumed business name for Teledyne Industries Inc., pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, seeking injunctive relief requiring cleanup of the Teledyne Wah Chang Albany Superfund Site in Millersburg, Oregon (the "Site") and recovery of response costs that have been and will be incurred by the United States in connection with the Site.

B. The City of Millersburg, Oregon ("the City" or "Settling Defendant") owns certain real property at the Site commonly referred to as the Soil Amendment Area. Through a deed agreement Teledyne Wah Chang conducted a property transfer and exchanged property with the City between March 1989 and March 1990. The City acquired the Soil Amendment Area and Teledyne acquired property contiguous to its Farm Ponds Area. In 1975 and 1976, Teledyne obtained solid waste permits from the Oregon Department of Environmental Quality to use solids from the primary wastewater treatment plant experimentally as a soil amendment. The solids were applied to the Soil Amendment Area once in 1976. The solids contained low levels of metals, radionuclides and organic compounds. Radium-226 and radium-228 concentrations in surface soil averaged approximately 2.5 and 1.8 pci/g respectively. A Remedial Investigation and Feasibility Study ("RI/FS") at the site subsequently indicated that the radionuclide contamination in the Soil Amendment Area could result in an unacceptable risk from radon inhalation in buildings constructed on this area, and that organic compounds are above levels that would allow unrestricted use of the property. Application of radioactive solids to the Soil Amendment Area occurred prior to the City's acquisition of the property.

C. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Teledyne

1 Wah Chang Facility on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by
2 publication to the Federal Register in October, 1983. 48 Fed. Reg. 40658.

3
4 D. In response to a release or a substantial threat of a release of a hazardous substance
5 at or from the Site, Teledyne commenced a Remedial Investigation and Feasibility Study ("RI/FS") for
6 the Site pursuant to 40 C.F.R. Part 300.430 under a Consent Agreement and Consent Order filed March
7 4, 1987.

8 E. In 1993, Teledyne completed an RI/FS Report and in 1995 an Addendum 1-
9 Radiological Survey incorporating external gamma and ambient outdoor radon measurements.

10 F. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the
11 completion of the FS and of the proposed plan for remedial action on August 25, 1993, in a major local
12 newspaper of general circulation. EPA provided an opportunity for written and oral comments from the
13 public on the proposed plan for remedial action. A copy of the transcript of the public meeting is
14 available to the public as part of the administrative record upon which the Regional Administrator based
15 the selection of the response action. In response to public comment, EPA modified the groundwater
16 remedy and deferred remediation of surface and subsurface soils to a separate operable unit. On July
17 21, 1995 EPA issued a proposed plan for soils remediation and provided an opportunity for public
18 comment.

19 G. The decisions by EPA on the remedial action implemented at the Site are embodied
20 in two final Records of Decision ("ROD's"), one for the Groundwater and Sediments Operable Unit,
21 executed on June 10, 1994, and one for the Surface and Subsurface Soils Operable Unit, executed on
22 September 27, 1995, on which the State of Oregon had a reasonable opportunity to review and comment
23 and on which the State of Oregon gave its concurrence. The RODs include EPA's explanation for any
24 significant differences between the final plans and the proposed plans as well as responsiveness
25 summaries to the public comments. Notice of the final plans was published in accordance with Section
26 117(b) of CERCLA.

1
2 H. In October of 1996, EPA, the Oregon Department of Environmental Quality and
3 Teledyne Wah Chang entered into a Consent Decree ("Teledyne Consent Decree") implementing the
4 decisions regarding cleanup outlined in the two RODs addressing both the Groundwater and Sediments
5 Operable Unit and the Surface and Subsurface Soils Operable Unit.

6 I. The Teledyne Consent Decree provides for remediation of contaminated soils and
7 groundwater at the Site and for payment of the United States' response costs in connection with this
8 work. EPA and DEQ have determined that settlement with the City pursuant to CERCLA, 42 U.S.C.
9 § 9622(g) (1)(B), which is embodied in this Consent Decree, is practicable and in the public interest.

10 J. This Consent Decree is being filed concurrently with a complaint against the City
11 which seeks access for EPA and DEQ to certain portions of the Site in order to implement the remedial
12 objectives of the Teledyne Consent Decree. The complaint also seeks the application of certain
13 environmental protections on the Soil Amendment Area, as reflected in the Scope of Work (SOW) and
14 SOW Exhibit A, the Environmental Protection Easement and Equitable Servitude, required by paragraph
15 9 herein, in order to maintain the integrity of the remedial work being performed at the Site.

16 K. The parties recognize and the Court, by entering this Consent Decree, finds that
17 settlement of this case without admission or adjudication of any issue of fact or law will expedite
18 cleanup of the Site and avoid expensive and time-consuming litigation between and among the parties
19 and that entry of this Consent Decree, therefore, is in the public interest.

20 NOW, THEREFORE, with the consent of the parties, it is ORDERED, ADJUDGED,
21 AND DECREED as follows:

22 **II. JURISDICTION**

23 1. This Court has jurisdiction over the subject matter of this action pursuant to 28
24 U.S.C. §§ 1311 and 1345, and 43 U.S.C. §§ 9606, 9607, 9613 and 9622, and the parties to this Consent
25 Decree. The parties agree to be bound by the terms of this Consent Decree and will not contest its
26

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2 validity in this or any subsequent proceeding to implement or enforce its terms.

3
4 **III. PARTIES BOUND**

5 2. The parties to this Consent Decree are the United States, the State of Oregon, and
6 the City of Millersburg, Oregon (the "parties"), and this Decree shall apply to and be binding upon the
7 United States, the State, and the City and its officials, employees, agents and assigns.

8
9 **IV. DEFINITIONS**

10 3. Unless otherwise expressly provided herein, terms used in this Consent Decree
11 which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning
12 assigned to them in the statute or in such regulations.

13 4. "Teledyne Consent Decree" shall mean the consent decree entered between the
14 United States and the State of Oregon and Teledyne. The Teledyne Consent Decree is to be construed
15 in pari materia with this Consent Decree.

16 5. "Site" shall mean the Teledyne Wah Chang Albany Superfund Site, consisting of
17 a main plant area, encompassing approximately 110 acres, and a farm ponds area, encompassing
18 approximately 115 acres, located in Millersburg, Linn County, Oregon. A portion of the site is owned
19 by the City of Millersburg. The boundaries of the Site are identified in the map attached to this Consent
20 Decree as Appendix A. The portion of the Teledyne Site owned by the City to which the SOW and the
21 Environmental Protection Easement and Equitable Servitude provided for in Section V of this Decree
22 applies is described more fully in the Warranty Deed attached to the map in Appendix A and also
23 identified below as:

24 Beginning at a point on the Southerly right of way of County Road No.
25 34 said point also being North 89°49'00" West 2475.00 feet and South
26 1°08'13" East 30.00 feet from the Northeast corner of the Isaac Miller, Sr.
Donation Land Claim No. 46 in Township 10 South, Range 3 West of the
Willamette Meridian, Linn County, Oregon; and running thence South

1
2 1°08'13" East a distance of 1854.98 feet; thence South 89°52'40" East
3 955.93 feet; thence North 1°08'13" West 1853.94 feet to said Southerly
4 right of way; thence along said right of way North 89°49'00" West 955.95
5 feet to the true place of beginning.

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V. GENERAL PROVISIONS

6. The objectives of the Parties in entering into this Consent Decree are: (a) to protect public health and welfare and the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendant; (b) to reimburse certain response costs of the Plaintiffs; and (c) to resolve the claims of Plaintiffs against Settling Defendant as provided in this Consent Decree, including, but not limited to claims for Past Response Costs, Interim Response Costs, and Future Response Costs.

**VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT; ACCESS AND
INSTITUTIONAL CONTROLS**

7. In order to implement the provisions of the Teledyne Consent Decree and to protect the integrity of the remedy to be performed thereunder, the City shall implement remedial design, remedial action and other activities in accordance with requirements, schedules and time frames set forth in the Consent Decree and the SOW. The SOW is incorporated into this Consent Decree at Appendix B and is enforceable under this Consent Decree. As long as it owns the property, the City shall also provide the United States, (including EPA), the State of Oregon (including DEQ), and their respective contractors and representatives, access to those properties described in Paragraph 5 of this decree, for purposes of performing or monitoring the remedial action at the Site.

8. Within 180 days of entry of this Consent Decree, the City shall submit for recording by the County Clerk's Office, Linn County, Oregon, an Environmental Protection Easement and Equitable Servitude substantially in the form of Exhibit A to the SOW. The Environmental Protection Easement and Equitable Servitude shall:

1
2 (a) provide access to the City's property, the Soil Amendment Area, for the
3 purposes outlined in Paragraph 6 of this Consent Decree and as set forth in the SOW Exhibit A; and

4 (b) provide for restrictions on use of the property, as set forth in the SOW Exhibit
5 A.

6 9. Within 15 days after such recording, the City shall submit a copy of the
7 Environmental Protection Easement and Equitable Servitude, as recorded, to EPA and DEQ.

8 10. Any portion of the Site which is owned by the City may be freely conveyed,
9 provided, however, that any deed or other instrument of conveyance shall contain easements and
10 equitable servitudes to the same effect as those required in SOW Exhibit A to this Consent Decree. In
11 the event of any such conveyance, the City shall notify EPA and DEQ within 30 days after closing and
12 shall provide EPA and DEQ with a copy of the deed or other instrument of conveyance. If, in addition
13 to the Easement and Equitable Servitude, zoning and building code restrictions substantially in the form
14 attached as Exhibit B to the SOW are not in place, the City, shall not construct, or allow to be
15 constructed, any buildings on the property until radium-contaminated soil is excavated and appropriately
16 disposed of in accordance with Exhibit C of the SOW.

17 11. The parties understand and agree that the Environmental Protection Easement and
18 Equitable Servitude described in SOW Exhibit A to this Consent Decree may only be modified or
19 terminated in whole or in part, upon filing of a release executed by the U.S. Environmental Protection
20 Agency and the Grantee.

21 12. The City recognizes that implementation of response actions at the Site may
22 interfere with the use of its property. The City shall cooperate with EPA and DEQ in implementation of
23 response actions at the Site and shall not interfere with such response actions. Nothing in this Consent
24 Decree shall be construed to relieve the City of its duty to exercise due care with respect to hazardous
25 substances at the Site or its duty to comply with all applicable regulations.

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VII. PAYMENT FOR RESPONSE COSTS

13. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and the State paid at or in connection with the Site through May 10, 2005. Within 30 days of the effective date of this Consent Decree, the City shall pay to the EPA Hazardous Substance Superfund \$91,964.95 in full reimbursement, including interest, of all Past Response Costs, by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice ("DOJ") referencing U.S.A.O. file number 2005V00747, the EPA Region and Site/Spill ID #105P, and DOJ case number 90-11-2-558/1. Payment shall be made in accordance with instructions provided to the City by the Financial Litigation Unit of the United States Attorney's Office for the District of Oregon following lodging of this Consent Decree. Payments by EFT must be received at the U.S. DOJ lockbox bank before 11:00 a.m. (Eastern Time) to be credited on that day. The City shall send notice that such payment has been made to the United States as specified in Section XIV (Notices And Submissions).

14. The State's Response Costs are currently funded through a Multi-Site Cooperative Agreement between the United States and the State. The United States and the State expect that this funding mechanism will remain in place throughout the duration of this Consent Decree. In the event that any or all of the State's Response Costs are not reimbursed through the Multi-Site Cooperative Agreement, however, the parties agree that the State's Response Costs shall be reimbursed by the City in the manner set forth herein. Specifically, the City shall reimburse the State for all State Future Response Costs not inconsistent with the National Contingency Plan. The State will send the City a bill requiring payment that includes a detailed itemized statement on a periodic basis. The City shall make such payments within 30 days of receipt of each bill requiring payment except as otherwise provided.

15. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and the State incur in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel

1 costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the
2 cost of attorney time and any monies paid to secure access and/or to secure or implement institutional
3 controls including, but not limited to, the amount of just compensation). In addition, Future Response
4 Costs shall include those Interim Response Costs that are incurred pursuant to 42 U.S.C. §§ 9607(a)
5 between May 10, 2005 and the Effective Date. "Interim Response Costs" shall mean all costs, including
6 direct and indirect costs (a) paid by the United States and/or the State in connection with the Site between
7 May 10, 2005 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.
8 The City shall reimburse the EPA Hazardous Substance Superfund for all Future Response Costs not
9 inconsistent with the National Contingency Plan. The United States will send the City a bill requiring
10 payment that includes a Superfund Cost Recovery Package and On-Line System (SCORPIOS) itemized
11 cost summary report on a periodic basis. The City shall make all payments within 30 days of the City's
12 receipt of each bill requiring payment. The City shall make all payments required by this Paragraph in
13 the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance
14 Superfund" and referencing the EPA Region and Site/Spill ID #105P, the DOJ case number 90-11-2-
15 558/1 and the name and address of the party making payment. The City shall send the certified check(s)
16 to:

17 Mellon Bank
18 EPA Region 10 Superfund
19 P.O. Box 371099M
Pittsburgh, PA 15251

20 and shall send copies of the check(s) to the United States as specified in Section XIV (Notices And
21 Submissions).

22 **VIII. CIVIL PENALTIES**

23 16. In addition to any other remedies or sanctions available to the United States and the
24 State, the City, pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and the Penalty Inflation
25 Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of
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1996, 31 U.S.C. § 2701, may be subject to a civil penalty of up to \$27,500 per day for each failure or refusal to comply with any term or condition of this Consent Decree.

IX. COVENANTS NOT TO SUE BY PLAINTIFFS

17. Except as specifically provided in Paragraph 18 below, the United States and the State covenant not to sue or take administrative action against the City for reimbursement of response costs for injunctive relief, or for any other relief pursuant to Section 106 or 107 of CERCLA, 42 U.S.C. §§9606 or 9607, and the State covenants not to sue pursuant to ORS 465.200 to 465.545 and 465.900, arising from conditions at the Site existing as of the date of entry of this Consent Decree. This covenant not to sue is conditioned on compliance with this Consent Decree and shall take effect upon the later of receipt by EPA and DEQ of payment of Past Response Costs or receipt by EPA and DEQ of a copy of the Environmental Protection Easement and Equitable Servitude (Exhibit A to the SOW), as recorded, as required pursuant to Paragraph 9 of this Consent Decree. Upon written request by the City, and upon verification that the City has satisfactorily completed payment of Past Response Costs and recording of the Easement and Equitable Servitude, EPA and DEQ will so certify in writing. This covenant not to sue extends only to the City and to no other person or entity.

18. General reservations. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against the City with respect to all matters not expressly included within the covenant not to sue in Paragraph 17 of this Consent Decree. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against the City with respect to:

- i. claims based on a failure by the City to meet a requirement of this Consent Decree;
- ii. liability, if any, arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- iii. liability based upon the City's transportation, treatment, storage, or

1 disposal, or the arrangement for the transportation, treatment, storage, or
2 disposal of Waste Material at or in connection with the Site, other than as
3 provided in the ROD, allowed by the SOW (including earth moving
4 activities within the site associated with development or construction) or
5 otherwise ordered by EPA, after signature of this Consent Decree by the
6 City;

- 7
8 iv. liability for damages for injury to, destruction of, or loss of natural
9 resources, and for the costs of any natural resource damage assessments;
10 v. criminal liability; and
11 vi. liability for violations of federal or state law which occur during or after
12 implementation of the Remedial Action.

13
14 **X. COVENANTS BY SETTLING DEFENDANT**

15 19. Covenant Not to Sue. Subject to the reservations in Paragraph 20, the City hereby
16 covenants not to sue and agrees not to assert any claims or causes of action against the United States or
17 the State with respect to the Site, Past and Future Response Costs, as defined herein, or this Consent
18 Decree, including, but not limited to:

19 a. any direct or indirect claim for reimbursement from the Hazardous Substance
20 Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA
21 Sections 106(b)(2), 107, 111, 112, 113, the state Hazardous Substance Remedial Action Fund pursuant
22 to ORS 465.260(7), or any other provision of law;

23 b. any claims against the United States, including any department, agency or
24 instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site; or

25 c. any claims arising out of response actions at or in connection with the Site,
26 including any claim under the United States Constitution, the Constitution of Oregon, the Tucker Act,

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28 DISTRICT OF OREGON
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1 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

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3 These covenants not to sue shall not apply in the event that the United States or the State
4 brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 18 (ii) - (iv),
5 but only to the extent that the City's claim arises from the same response action, response costs, or
6 damages that the United States or the State is seeking pursuant to the applicable reservation.

7 20. The City reserves, and this Consent Decree is without prejudice to, claims against
8 the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for
9 money damages for injury or loss of property or personal injury or death caused by the negligent or
10 wrongful act or omission of any employee of the United States while acting within the scope of his office
11 or employment under circumstances where the United States, if a private person, would be liable to the
12 claimant in accordance with the law of the place where the act or omission occurred. However, any such
13 claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any
14 person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C.
15 § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the
16 oversight or approval of the City's plans or activities. The foregoing applies only to claims which are
17 brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is
18 found in a statute other than CERCLA.

19 21. Nothing in this Consent Decree shall be deemed to constitute preauthorization of
20 a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

21
22 **XI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

23 22. Subject to the reservation of rights in Paragraph 18 of this Consent Decree, the
24 United States and the State agree that, by entering into and carrying out the terms of this Consent Decree,
25 the City will have resolved its liability for the matters set forth in the United States' and the State's
26 covenants not to sue set forth in Paragraph 17 of this Decree and shall be entitled to such protection from

1 contribution actions or claims as is provided in Sections 113(f)(2) of CERCLA, 42 U.S.C. §§ 9613(f)(2),
2 and ORS 465.325(6)(b). The "matters addressed" in this Consent Decree are all response actions taken
3 or to be taken and all response costs incurred pursuant to this Consent Decree or to be incurred, at or in
4 connection with the Site, by the United States, the State, their agents, assignees or contractors.
5

6 **XII. ACCESS TO INFORMATION**

7
8 23. The City shall provide to EPA and DEQ, upon request, copies of all documents and
9 information within its possession or control or that of its contractors or agents relating to activities at the
10 Soil Amendment Area or to the implementation of this Consent Decree, including, but not limited to,
11 sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic
12 routing, correspondence, or other documents or information related to the Work. The City shall also
13 make available to EPA and DEQ, for purposes of investigation, information gathering, or testimony, its
14 employees, agents, or representatives with knowledge of relevant facts concerning the performance of
15 the Work required under this Consent Decree.

16 **Business Confidential and Privileged Documents.**

17 24. The City may assert confidentiality claims covering part or all of the documents or
18 information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in
19 accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
20 Documents or information determined to be confidential by EPA will be afforded the protection specified
21 in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information
22 when they are submitted to EPA and the State DEQ, or if EPA has notified the City that the documents
23 or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R.
24 Part 2, Subpart B, the public may be given access to such documents or information without further notice
25 to the City.

26 25. The City may assert that certain documents, records and other information are

1 privileged under the attorney-client privilege or any other privilege recognized by federal law. If the City
2 asserts such a privilege in lieu of providing documents, it shall provide the Plaintiffs with the following:
3 (1) the title of the document, record, or information; (2) the date of the document, record, or information;
4 (3) the name and title of the author of the document, record, or information; (4) the name and title of each
5 addressee and recipient; (5) a description of the contents of the document, record, or information; and (6)
6 the privilege asserted by the City. However, no documents, reports or other information created or
7 generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they
8 are privileged.

9
10 26. No claim of confidentiality shall be made with respect to any data, including, but
11 not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering
12 data, or any other documents or information evidencing conditions at or around the Site.

13 **XIII. RETENTION OF RECORDS**

14
15 27. Until 10 years after the City's receipt of EPA's certification pursuant to paragraph
16 17, the City shall preserve and retain all non-identical copies of records and documents (including records
17 or documents in electronic form) now in its possession or control or which come into its possession or
18 control that relate in any manner to its liability under CERCLA with respect to the Site. As the property
19 owner, the City must retain, in addition, all documents and records that relate to the liability of any other
20 person under CERCLA with respect to the Soil Amendment Area. The City must also retain, and instruct
21 its contractors and agents to preserve, for the same period of time specified above all non-identical copies
22 of the last draft or final version of any documents or records (including documents or records in electronic
23 form) now in its possession or control or which come into its possession or control that relate in any
24 manner to the performance of the Work, provided, however, that the City (and its contractors and agents)
25 must retain, in addition, copies of all data generated during the performance of the Work and not
26 contained in the aforementioned documents required to be retained. Each of the above record retention

1 requirements shall apply regardless of any corporate retention policy to the contrary.

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3 28. At the conclusion of this document retention period, the City shall notify the United
4 States and the State at least 90 days prior to the destruction of any such records or documents, and, upon
5 request by the United States or the State, the City shall deliver any such records or documents to EPA and
6 DEQ. The City may assert that certain documents, records and other information are privileged under
7 the attorney-client privilege or any other privilege recognized by federal law. If the City asserts such a
8 privilege, it shall provide the Plaintiffs with the following: (1) the title of the document, record, or
9 information; (2) the date of the document, record, or information; (3) the name and title of the author of
10 the document, record, or information; (4) the name and title of each addressee and recipient; (5) a
11 description of the subject of the document, record, or information; and (6) the privilege asserted by the
12 City. However, no documents, reports or other information created or generated pursuant to the
13 requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

14 29. The City hereby certifies that, to the best of its knowledge and belief, after
15 thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records,
16 documents or other information (other than identical copies) relating to its potential liability regarding
17 the Site since notification of potential liability by the United States or the State or the filing of suit against
18 it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant
19 to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA,
20 42 U.S.C. 6927.

21 **XIV. NOTICES AND SUBMISSIONS**

22 30. Whenever the Consent Decree requires written notice to be given or a document to
23 be sent by one party to another, it shall be directed to the individuals and addresses specified below, or
24 to such other individuals as the parties may hereafter designate in writing.

25 As to the United States:
26 Chief, Environmental Enforcement Section

27 UNITED STATES ATTORNEY
28 DISTRICT OF OREGON
888 SOUTHWEST 5TH AVENUE, SUITE 1000
PORTLAND, OREGON 97204-2024

1 Environment and Natural Resources Division
2 U.S. Department of Justice
3 P.O. Box 7611
4 Ben Franklin Station
Washington, D.C. 20044
Re: DJ #

5 As to EPA:
6 Ravi Sanga
7 Remedial Project Manager for
8 Teledyne Wah Chang Albany Superfund Site
9 Environmental Cleanup Office
U.S. Environmental Protection Agency Region 10
1200 Sixth Avenue, ECL-111
Seattle, Washington 98101

10 As to the State of Oregon:
11 Project Manager for
12 Teledyne Wah Chang Albany Superfund Site
Oregon Department of Environmental Quality
1102 Lincoln Street, Suite 210
Eugene, Oregon 97401

13 As to the City of Millersburg:
14 Clayton Wood, Mayor
15 City of Millersburg
4222 NE Old Salem Road
Albany, Oregon 97321
16 Forrest Reid, OSB#86084
17 Attorney for City of Millersburg
135 SW Fifth
P. O. Box 577
18 Albany, Oregon 97321

19
20 **XV. EFFECTIVE DATE; RETENTION OF JURISDICTION; MODIFICATION AND**
21 **ENFORCEMENT**

22 31. This Consent Decree shall be effective as of the day it is entered by the Court.

23 32. This Court retains jurisdiction over both the subject matter of this Consent Decree
24 and the Settling Defendant for the duration of the performance of the terms and provisions of this
25 Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for
26 such further order, direction, and relief as may be necessary or appropriate for the construction or

1 modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to
2 resolve disputes.

3
4 33. No material modifications shall be made to the SOW without written notification
5 to and written approval of the United States, the State, the City, and the Court, if such modifications
6 fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R.
7 300.435(c)(2)(B)(ii). Modifications to the SOW that do not materially alter that document, or
8 material modifications to the SOW that do not fundamentally alter the basic features of the selected
9 remedy within the meaning of 40 C.F.R.300.435(c)(2)(B)(ii), may be made by written agreement
10 between EPA, DEQ, and the City.

11 34. No modification of this Consent Decree shall be binding unless it is in writing and
12 approved by this Court. Nothing herein shall be deemed to alter the Court's authority to enforce,
13 supervise, or approve modifications to this Consent Decree.

14 **XVI. APPENDICES**

15 35. The following appendices are attached to and incorporated into this Consent
16 Decree:

17 Appendix A is the description and/or map of the Site and the Warranty Deed with the
18 legal description of the portion of the Site owned by the City

19 Appendix B is the Scope of Work (SOW) with Exhibits A, B, C

20 SOW Exhibit A - Environmental Protection Easement and Equitable Servitude

21 SOW Exhibit B - Form of Radon Ordinance

22 SOW Exhibit C - Requirements for Remedial Design and Remedial Action
23 (RD/RA) for Soil Removal or Berming.
24

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2 **XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

3 36. This Consent Decree shall be lodged with the Court for a period of not less than 30
4 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C.
5 §9622(d)(2), and 28 C.F.R. §50.7. The United States and the State reserve the right to withdraw or
6 withhold their consent if the comments regarding the Consent Decree disclose facts or considerations that
7 indicate that the Consent Decree is inappropriate, improper, or inadequate. The City consents to the entry
8 of this Consent Decree without further notice.

9 37. If for any reason the Court should decline to approve this Consent Decree in the form
10 presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement
11 may not be used as evidence in any litigation between the Parties.

12 **XVIII. SIGNATORIES/SERVICE.**

13 38. Each undersigned representative of each Party to this Consent Decree, certifies that
14 he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute
15 and legally bind such Party to this document.

16 39. The City hereby agrees not to oppose entry of this Consent Decree by this Court or
17 to challenge any provision of this Consent Decree unless the United States and the State have notified
18 City in writing that they no longer support entry of the Consent Decree.

19 40. The City shall identify, on the attached signature page, the name, address and
20 telephone number of an agent who is authorized to accept service of process by mail on behalf of the City
21 with respect to all matters arising under or relating to this Consent Decree. The City hereby agrees to
22 accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the
23 Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited
24 to, service of a summons.

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XIX. FINAL JUDGMENT

41. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

42. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the State and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

THE UNDERSIGNED PARTIES enter into this Consent Decree relating to the Teledyne Wah Chang Albany Superfund Site and submit it to the Court for approval and entry.

SO ORDERED THIS _____ DAY OF _____, 2005

UNITED STATES DISTRICT JUDGE

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of the United States v. City
2 of Millersburg, Oregon, relating to the Teledyne Wah Chang Albany Superfund Site.

3
4
5 **FOR THE UNITED STATES OF AMERICA:**
6

7
8 Date: Dec 12, 2005

9 BRUCE S. GELBER
10 Section Chief
11 Environmental Enforcement Section
12 U.S. Department of Justice
13 601 D Street, NW
14 Washington, D.C. 20004

15 DAVID ASKMAN, Trial Attorney
16 Environmental Enforcement Section
17 Environment and Natural Resources Division
18 U.S. Department of Justice
19 999 18th Street, Suite 945NT
20 Denver, Colorado 80202

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27 UNITED STATES ATTORNEY
DISTRICT OF OREGON
388 SOUTHWEST 5TH AVENUE, SUITE 1000
28 PORTLAND, OREGON 97204-2024

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of the United States v. City
2 of Millersburg, Oregon, relating to the Teledyne Wah Chang Albany Superfund Site.

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4
5 **FOR THE UNITED STATES OF AMERICA (cont d.):**
6

7
8 Date: _____
9

NEIL J. EVANS, OSB#87111
Assistant United States Attorney
District of Oregon
U.S. Department of Justice
888 Southwest 5th Avenue, Suite 1000
Portland, Oregon 97204-2024

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of the United States v. City
2 of Millersburg, Oregon, relating to the Teledyne Wah Chang Albany Superfund Site.

3
4
5 **FOR THE UNITED STATES OF AMERICA (cont d.):**
6

7
8 Date: _____
9

L. MICHAEL BOGERT
Regional Administrator
U.S. Environmental Protection Agency Region 10
1200 Sixth Avenue, RA-140
Seattle, Washington 98101

10
11
12
13
14 Date: _____
15

JOAN C. SHIRLEY
Assistant Regional Counsel
U.S. Environmental Protection Agency Region 10
1200 Sixth Avenue, ORC-158
Seattle, Washington 98101
(206) 553-1037

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26
27 UNITED STATES ATTORNEY
DISTRICT OF OREGON
888 SOUTHWEST 5TH AVENUE, SUITE 1000
PORTLAND, OREGON 97204-2024

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of the United States v. City
2 of Millersburg, Oregon, relating to the Teledyne Wah Chang Albany Superfund Site.

3
4 **FOR THE STATE OF OREGON:**

5
6
7 Date: _____

KERRI NELSON, ADMINISTRATOR
Oregon Department of Environmental Quality
Western Region
1102 Lincoln Street, Suite 210
Eugene, Oregon 97401

8
9
10
11 Date: _____

KURT BURKHOLDER, OSB#80465
Assistant Attorney General
Oregon Department of Justice
Natural Resources Section
1515 SW Fifth Avenue
Portland, Oregon 97201
(503) 229-5725

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27 UNITED STATES ATTORNEY
DISTRICT OF OREGON
888 SOUTHWEST 5TH AVENUE, SUITE 1000
28 PORTLAND, OREGON 97204-2024

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of the United States v. City
2 of Millersburg, Oregon, relating to the Teledyne Wah Chang Albany Superfund Site.

3
4 **FOR CITY OF MILLERSBURG, OREGON:**

5
6 Date: _____

7 CLAYTON WOOD, Mayor
8 City of Millersburg
4222 N.E. Old Salem Road
Albany, Oregon 97321

9
10 Date: _____

11 FORREST REID, OSB#86084
12 Attorney for City of Millersburg
13 135 SW Fifth
P. O. Box 577
Albany, Oregon 97321
(541) 926-3823

14
15 Date: _____

16 PATRICIA DOST, OSB#90253
17 Schwabe Williamson & Wyatt
1211 SW Fifth Avenue
Suites 1600-1800
Portland, Oregon 97204-3795
18 (503) 796-2449

19 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

20 Name: _____

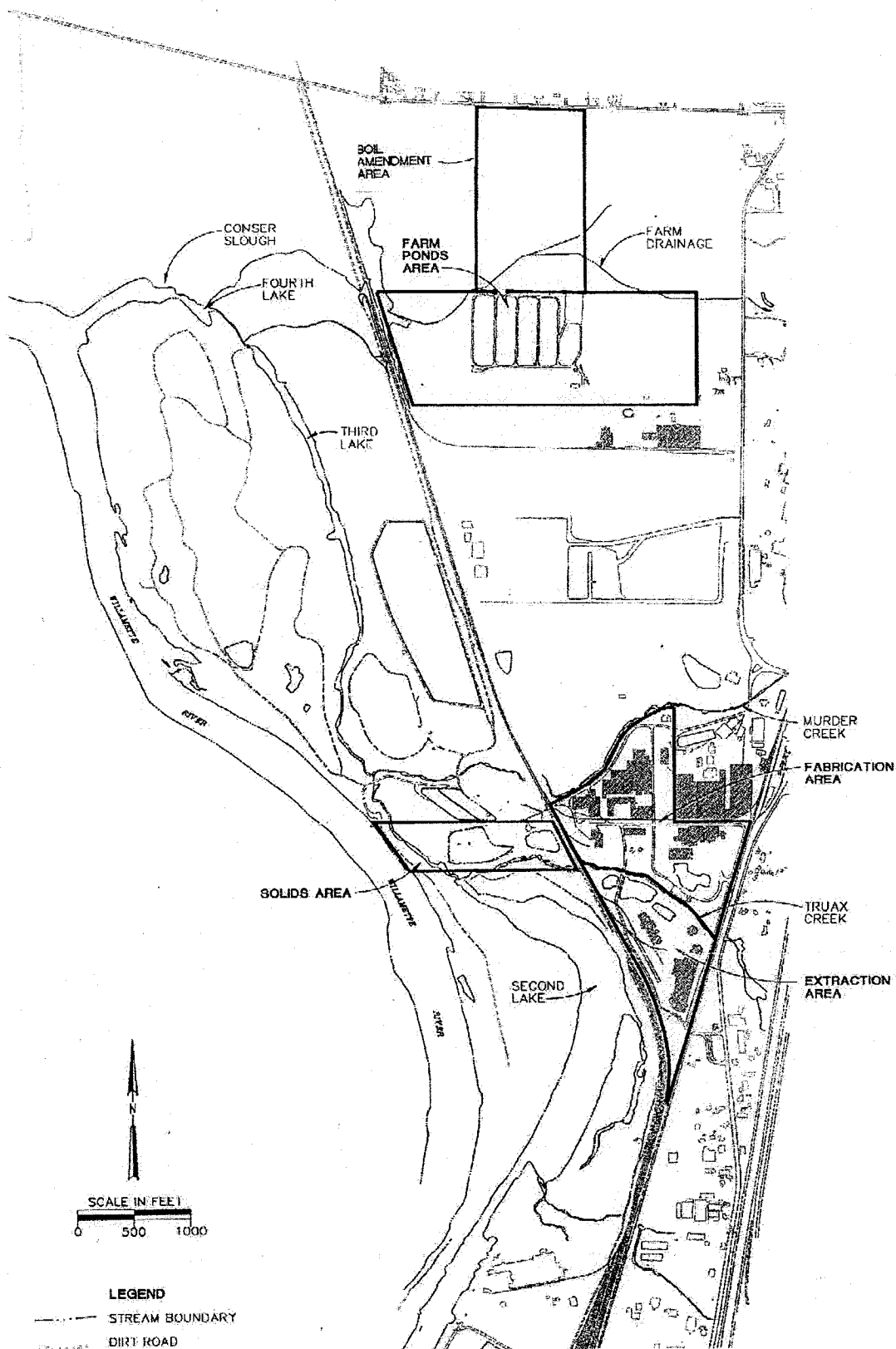
21 Title: _____

22 Address: _____

23 Tel. No.: _____

Appendix A

Site Map



FIGURE

TELEDYNE WAH CHANG ALBANY
 ALBANY, OREGON

Warranty Deed

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That Teledyne Industries, Inc., a California corporation, hereinafter called the grantor, for the consideration hereinafter stated, to grantor paid by the City of Millersburg, a municipal corporation of the State of Oregon, hereinafter called the grantee, does hereby grant, bargain, sell and convey unto the said grantee and grantee's heirs, successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, situated in the County of Linn and State of Oregon, described as follows, to-wit:

Beginning at a point on the Southerly right of way of County Road No. 34 said point also being North 89°49'00" West 2475.00 feet and South 1°08'13" East 30.00 feet from the Northeast corner of the Isaac Miller, Sr. Donation Land Claim No. 46 in Township 10 South, Range 3 West of the Willamette Meridian, Linn County, Oregon; and running thence South 1°08'13" East a distance of 1854.98 feet; thence South 89°52'40" East 955.93 feet; thence North 1°08'13" West 1853.94 feet to said Southerly right of way; thence along said right of way North 89°49'00" West 955.95 feet to the true place of beginning.

SAVE AND EXCEPT:

Said easement more particularly described as follows: Beginning at a 5/8" iron rod on the Easterly line of that tract described in Linn County Deed Records, MF 135-687, said rod being S1°08'13"E 1,856.44 feet, S88°51'17"W 30.04 feet and N89°53'15"W 1,488.97 feet from the Northeast corner of the Isaac Miller D.L.C. No. 46 in T10S, R3W, W.M., Linn County, Oregon. Thence N89°53'15"W 956.065 feet to a 5/8" iron rod on the most Easterly line of that tract described in Linn County Deed Records MF 379-278; thence along said Easterly line, N1°07'49"W 100.03 feet to a 5/8" iron rod; thence S89°53'15"E 956.06 feet to a 5/8" iron rod; thence S1°08'14"E 100.02 feet to the point of beginning. Containing 95,613 square feet more or less.

SUBJECT TO:

1. The rights of the public in and to that portion of the herein described property lying within the limits of public roads, streets or highways.

2. An easement created by instrument, including the terms and provisions thereof,
Recorded : August 26, 1982
MF Volume: 318 Page: 873
In Favor of: City of Millersburg
(Over) : North and West 20 feet of Tax Lot 101

To Have and to Hold the same unto the said grantee and grantee's heirs, successors and assigns forever.

And said grantor hereby covenants to and with said grantee and grantee's heirs, successors and assigns, that grantor is lawfully seized in fee simple of the above granted premises, free from all encumbrances, except those of record, and that grantor will warrant and forever defend the said premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever, except those claiming under the above described encumbrances.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$-0-, with the true considering being the exchange of other lands between grantee and grantor.

In construing this deed and where the context so requires, the singular includes the plural and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and to individuals.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USED.

In Witness Whereof, the grantor has executed this instrument this 22nd day of March, 1989; by the duly authorized corporate officer.

TELEDYNE WAH CHANG ALBANY,
a division of Teledyne
Industries Inc., a California
corporation

By: _____
Title: President

STATE OF OREGON)
) ss.
COUNTY OF LINN)

Date: March 22, 1989

Personally appeared J. E. Riven, who being duly sworn did say that he is the President of Teledyne Wah Chang Albany, a division of Teledyne Industries, Inc., a California corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors; and he acknowledged the foregoing instrument to be its voluntary act and deed. Before me:

Notary Public for Oregon

My Commission Expires: 5/23/91

Grantor's Name and Address:

Teledyne Industries, Inc.,
P.O. Box 460
Albany, Oregon 97321

Assessor's Account No.:

Grantee's Name and Address:

City of Millersburg
4222 Old Salem Road N.E.
Albany, Oregon 97321

After recording return to:

Weatherford, Thompson,
Erickey & Quick, P.C.
P.O. Box 667
Albany, OR 97321

Until a change is requested all
tax statements shall be sent to:

City of Millersburg
4222 Old Salem Road N.E.
Albany, Oregon 97321

Appendix B

CITY OF MILLERSBURG, OREGON

SCOPE OF WORK

For Implementation of Soil Amendment Area Remedy

I. Radon Requirements

If buildings are constructed in the Soil Amendment Area, migration of radon from the soil to indoor air could result in radon levels that would pose an unacceptable risk to building occupants. Modeling of radon levels that could occur in a hypothetical building that could be constructed in the future in the Soil Amendment Area indicated that radon levels could reach as high as 10.6 pCi/liter, which could cause an excess lifetime cancer risk as high as 2 in 1000. EPA's current recommended level for radon is 4 pCi/liter. Using a worker exposure scenario, this concentration equates to a risk of 6 excess cancers in 10,000. To abate this hypothetical risk associated with future construction in the Soil Amendment Area, remedial action is necessary.

II. Alternatives for Addressing Radium Contamination:

The City of Millersburg (the City) or a subsequent owner shall implement one or a combination of the following options in response to radium contamination in the Soil Amendment Area. If the City or a subsequent owner of the property elects to proceed under option B (Excavation of Contaminated Soil) or option C (Modeling for Certain Buildings) the City shall notify EPA and DEQ in advance. Unless and until the City provides EPA and DEQ subsequent notice that it is withdrawing the election, it shall proceed according to the election for the portion of the site affected by the election.

A. Radon-Resistant Construction Methods

Use radon-resistant construction methods in accordance with Section VI below. In all such buildings, the indoor air must be tested for radon, using EPA approved methods. If radon concentrations exceed 4 pCi/liter or exceed a more conservative risk-based, applicable standard promulgated or recommended by EPA in a published guidance document in effect at the time sampling is conducted (collectively, the "Indoor Air Standard"), additional controls will be required until the Indoor Air Standard is met.

B. Excavation of Contaminated Soil

Excavate radium-contaminated soil in accordance with Exhibit C until the concentrations of radium in the remaining soil are consistent with the soil action level specified in Exhibit C. background radium concentrations. If testing demonstrates that excavation of the contaminated soil has reduced radium 226 concentrations in the remaining soils to the soil action level, radon resistant construction methods and testing for radon will not be required in buildings that are constructed in the excavated areas. Acceptable soil disposal options for the excavated soil include disposal in an approved landfill permitted to receive such waste or onsite berming of the soil. Any contaminated soil

placed in on-site berms will be subject to the radon resistant control construction requirements described in A above and to zoning restrictions to prevent construction on the berms. Other options for disposal would require prior approval by EPA.

C. *Modeling for Certain Buildings.* For buildings for which radon controls are not appropriate (such as open-sided sheds and parking structures), demonstrate to EPA's satisfaction through estimates of indoor radon concentration, using methods approved by EPA and parameters which match the particular buildings to be constructed on the Soil Amendment Area, that the levels of radon in the buildings will be less than the Indoor Air Standard. If this demonstration is made to EPA's satisfaction, no radon controls or excavation will be required for the building. If any subsequent changes to the building would change the assumptions used in the initial modeling demonstration, the modeling and demonstration must be updated to EPA's satisfaction.

III. Record Keeping and Recording By the City

The City shall maintain records documenting the status of the remediation of the Soil Amendment Area. Records shall be available for inspection by the agencies and by the public and shall be provided to EPA and DEQ upon request. At a minimum, records shall include the RI/FS and the RODs for the Teledyne Wah Chang Superfund Site; this CD and SOW and all appendices and attachments thereto; all plans, reports, and other documents required to be prepared and submitted to the City in accordance with Sections II, IV, and VI and Exhibit C of this SOW, including a survey map of bermed soil, if any, and information on ownership, building construction, radon tests results and/or modeling for each building on the Soil Amendment Area.

IV. Access Easements and Restrictive Covenants That Run With The Land

Within 180 days of the effective date of this CD, the City shall record in the deed registry an Easement and Equitable Servitude in the form attached as Exhibit A to this SOW, which shall run with the real property described in Appendix A to the CD, shall be binding on all successors in title, and shall be enforceable by the City. The easement shall provide for access to the Soil Amendment Area at all reasonable times, for Wah Chang, EPA, DEQ, and their respective contractors and representatives and successor agencies, for the purposes of monitoring the remedial action at the Site. The equitable servitude shall, at a minimum, provide for the following restrictions on the use of the property and shall also require notice of these restrictions to lessees:

- A. As a result of radium concentrations in the soil that could lead to high radon levels in structures, the property shall not be used for residential purposes.
- B. Requirements to employ one or a combination of the alternative controls specified in Section II above.

V. Zoning And Development Requirements

If, in addition to the access easements and restrictive covenants, zoning and building code restrictions substantially in the form attached as Exhibit B to this SOW are not in place, the City shall not construct, or allow to be constructed, any buildings on the property until radium-contaminated soil is excavated and appropriately disposed of in accordance with Exhibit C of this SOW.

VI. Radon Mitigation Requirements For Buildings on the Soil Amendment Area

For any portions of the property for which the City does not elect to use option II.B (Excavation of Contaminated Soil) or option II.C (Modeling for Certain Buildings), the following provisions shall apply.

- A. Initial Construction. Buildings and/or other enclosed structures shall be designed and constructed consistent with EPA guidance and recommendations current at the time of construction for radon resistant construction. The current guidance is contained in ***Radon Prevention in the Design and Construction of Schools and Other Large Buildings, June 1994 (EPA/625/R-92/016)*** (the "Large Building Guidance"). Construction will utilize either: (1) active systems such as active soil depressurization ("ASD") or building pressurization as described in the Large Building Guidance or (2) passive soil depressurization combined with sealing of radon entry routes. ASD consists of a layer of coarse aggregate below the building slab, radon suction pits below the slab, vent pipes and suction fans. If passive soil depressurization is used, the system consists of the same components as ASD except for the fans, but will include a rough-in for the addition of fans to convert it to ASD (as described in the Large Building Guidance) if necessary. Sealing of radon entry routes shall be done using the methods described in the Large Building Guidance or using a gas-impermeable membrane.
- B. Testing after building is constructed. Immediately following completion of construction, new buildings shall be tested for radon using EPA-approved sampling methods. If allowed under State and local laws, occupancy may occur prior to completion of the initial testing. If radon concentrations exceed the Indoor Air Standard in effect at the time, building owners shall be required to put in place additional radon controls and shall conduct additional testing until retesting shows that concentrations are below the standard. Such additional testing, and controls if necessary, shall also be required after major structural changes are made to the building or its HVAC system that could affect the effectiveness of the radon controls.
- C. System Maintenance Requirements. Building owners/lessees shall be required to maintain the radon control system in proper working order. Satisfactory maintenance shall, at a minimum, conform to maintenance

requirements set forth in the Large Building Guidance, or updated EPA guidance.

- D. Subsequent Testing and Inspection. At least once every five years, buildings shall be inspected for slab settling, floor or basement wall cracks and other conditions that may reduce the effectiveness of the radon-resistant construction. If such conditions are found during the inspection, the affected buildings will be tested for radon using EPA-approved sampling methods. Building owners/lessees shall be required to take appropriate actions to reduce radon concentrations if radon levels in buildings exceed the Indoor Air Standard in effect at the time.
- E. Testing Results. All radon testing results shall be maintained by the City of Millersburg in the City's file for the Site. The testing results must identify the building address and ownership and shall include a description of the reason for radon sampling (i.e. for occupancy, results of prior sampling, changes in building or HVAC configuration, etc). Where results exceed the Indoor Air Standard, the information shall include a description of measures taken to modify the radon system to reduce concentrations and the retest results showing compliance with the standard. Records of radon testing, radon system maintenance, and inspection logs shall be kept on site in the Soil Amendment Area or be electronically accessible at the Soil Amendment Area and must be readily available for inspection by building occupants, and/or representatives of the City of Millersburg, EPA, or DEQ.
- F. Notice to Occupants. Building owners/lessees shall be required to provide notifications to building occupants as described below:
1. Building occupants must be notified in writing or electronically that the building they occupy needs radon controls for potential risk reduction. Such notification shall include, at a minimum, a posted notice in a prominent place within the building.
 2. Content of the notification to building occupants shall include information on the location of the site records, the radon controls that are in place at the site, and the reasons for the radon controls.

Exhibits Attached to this SOW:

SOW Exhibit A - Easement and Restrictive Covenants

SOW Exhibit B - Zoning and Development Restrictions

SOW Exhibit C - Excavation RD/RA for Soil and Berming

SOW Exhibit A

AFTER RECORDING, RETURN
CERTIFIED COPY TO:

**ENVIRONMENTAL PROTECTION EASEMENT
AND
EQUITABLE SERVITUDE**

THIS ENVIRONMENTAL PROTECTION EASEMENT AND EQUITABLE SERVITUDE ("EES") is made this ___ day of _____, 2005, by the City of Millersburg, Oregon ("Grantor" or "City") for the benefit of TDY Industries, Inc. ("Grantee").

RECITALS

- A. Grantor is the owner of a parcel of land located in Linn County, Oregon as described on Exhibit A to this Easement and Equitable Servitude (the "Property").
- B. The Property is part of the Teledyne Wah Chang Albany Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register in October, 1983. The portion of the Site represented by the Property has been determined to contain elevated levels of radium. If buildings are constructed on the Property without radon control measures, the radium in the soil could cause levels of radon in the indoor air that would pose an unacceptable risk to building occupants.
- C. In a Record of Decision, Declaration, Decision Summary and Responsiveness Summary for Final Remedial Action for Surface and Subsurface Soil Operable Unit dated September 27, 1995 (the "ROD"), the EPA Region 10 Regional Administrator selected a remedial action for the Site, which provides, in part, for the following actions with respect to the Property (also referred to in the ROD as the Soil Amendment Area):
 - 1. For areas where modeling indicates that radon concentrations in future buildings could exceed 4 pCi/liter, institutional controls requiring that future buildings be constructed using radon resistant construction methods; and
 - 2. If excavation occurs as part of future development, excavated material must be properly handled and disposed of in accordance with federal and state laws.

- D. In order to implement the selected remedy and ensure protection of human health and the environment, this Easement and Equitable Servitude imposes certain requirements on the management of contaminated soils and the construction of buildings on the Property and for continuing obligations for operation, maintenance and monitoring of the required controls. This Easement and Equitable Servitude also provides for a permanent nonexclusive easement for the purpose of implementing, facilitating and monitoring the remedial action.
- E. This Easement and Equitable Servitude has been entered pursuant to the terms of the Consent Decree entered by and between the United States of America and the State of Oregon and Grantor dated _____, 2005 (**insert case number**) (the "Consent Decree").

TERMS OF AGREEMENT

1. **Grant.** Grantor, on behalf of itself, its successors and assigns (including all subsequent Property Owners, as defined in section 8.14 of this Easement and Equitable Servitude), in consideration of the terms of Consent Decree, covenants and declares that the Property is and shall be held, conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this Easement and Equitable Servitude. Each condition, covenant and restriction set forth in this Easement and Equitable Servitude touches and concerns the Property and the equitable servitude and easement granted herein, shall run with the land for all purposes, shall be binding upon all Property Owners as set forth in this Easement and Equitable Servitude, and shall inure to the benefit of the Grantee and all parties having any right, title or interest in any portion of the Property (leasehold thereof) and their successors and assigns until such time as same shall be removed by written certification from Grantee and EPA that the Easement and Equitable Servitude are no longer required. Grantor further does give, grant and convey to the Grantee, and its assigns, the perpetual right to enforce this Easement and Equitable Servitude, and an environmental protection easement of the nature and character, and for the purposes set forth below in Section 6, with respect to the Property. It is the purpose of this Easement and Equitable Servitude to convey to the Grantee real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.

2. **Use Restriction.** No portion of the Property shall be used for residential purposes.

3. **Building Construction.**

3.1 *Applicability.* Except as provided in section 4.2 below, this section 3 applies to all buildings or other enclosed structures that are constructed on the Property. This section does not apply to open structures such as parking areas (including parking areas that are covered, but not enclosed), exterior storage areas, utility vaults or other similar structures.

3.2 *Initial Construction.* Buildings and other enclosed structures shall be designed and constructed consistent with EPA guidance and recommendations current at the time of construction for radon resistant construction. The current guidance is contained in **Radon**

Prevention in the Design and Construction of Schools and Other Large Buildings, June 1994 (EPA/625/R-92/016) (the "Large Building Guidance"). Construction will utilize either: (1) active systems such as active soil depressurization ("ASD") or building pressurization as described in the Large Building Guidance or (2) passive soil depressurization combined with sealing of radon entry routes. ASD consists of a layer of coarse aggregate below the building slab, radon suction pits below the slab, vent pipes and suction fans. If passive soil depressurization is used, the system consists of the same components as ASD except for the fans, but will include a rough-in for the addition of fans to convert it to ASD (as described in the Large Building Guidance) if necessary. Sealing of radon entry routes shall be done using the methods described in the Large Building Guidance or using a gas-impermeable membrane.

3.3 *Testing after building is constructed.* Following completion of construction, new buildings shall be tested for radon using EPA-approved sampling methods. If allowed under State and local laws, occupancy may occur prior to completion of the initial testing. If radon concentrations exceed 4 pCi/liter or exceed a more conservative risk-based, applicable standard promulgated or recommended by EPA in a published guidance document in effect at the time sampling is conducted (collectively, the "Indoor Air Standard"), building owners shall be required to put in place additional radon controls and shall conduct additional testing until retesting shows that concentrations are below the standard.

3.4 *Maintenance.* The Property Owner shall maintain the radon control system in proper working order. Satisfactory maintenance shall, at a minimum, conform to maintenance requirements set forth in the Large Building Guidance, or updated EPA guidance.

3.5 *Radon Monitoring.* The Property Owner shall monitor indoor air in buildings on the Property to confirm that the concentration of radon in building interiors is maintained below the Indoor Air Standard as follows:

3.5.1 Upon initial construction after all radon control measures and HVAC systems are in place and operating, the Property Owner shall test the indoor air consistent with the requirements of this section 3.5. At the latest, initial testing must be completed within 90 days of initial occupancy of a building.

3.5.2 The Property Owner must test indoor air consistent with the requirements of this section 3.5 following major structural changes or major changes to the HVAC system that reasonably may affect the operation or effectiveness of the radon control systems.

3.5.3 After one or more buildings have been constructed on the Property, the Property Owner must inspect the buildings for slab settling, floor or basement wall cracks and other conditions that may reduce the effectiveness of the radon-resistant construction at least 12 months before each fifth anniversary of the date of this Easement and Equitable Servitude. If such conditions are found during the inspection, the Property Owner shall notify the City and allow the City or its designee to test the affected buildings for radon using EPA-approved sampling methods. If the City fails to complete such testing within 6 months of Property Owner's inspection notice to the City, the Property Owner shall conduct and complete the test at least 3 months before each fifth anniversary of this Easement and Equitable Servitude.

3.5.4 All radon testing required by this section shall be conducted in accordance with applicable published EPA guidance or recommendations in effect at the time of the testing. As of the date of this Easement and Equitable Servitude, the current EPA guidance on radon testing is set forth in the document entitled *Protocols for Radon and Radon Decay Product Measurements in Homes* (June 1993) (EPA 402-R-92-003) and *Radon Measurements in Schools* (July 1993) (EPA 402-R-92-014).

3.5.5 If radon testing detects concentrations of radon in excess of the Indoor Air Standard, the Property Owner shall put in place additional controls or take other measures to reduce the indoor radon concentration. The Property Owner shall then retest the indoor air. The Property Owner shall employ further controls or other measures and retest until the indoor radon levels satisfy the Indoor Air Standard.

3.6 *Notice to Occupants.* The Property Owner shall notify building tenants and other occupants of buildings on the Property that the building they occupy is constructed with radon controls and that such controls and their proper operation are necessary to reduce potential risks from radon exposure. The notice shall inform building occupants of the location of records required by this Easement and Equitable Servitude and that the records are available for their review. The notice must be in writing and, at a minimum, must be posted in a prominent place within the building.

4. Soil Management and Excavation Requirements

4.1 *Offsite Disposal of Soil.* Any soil that is removed from the Property must be transported to an authorized solid waste, low level radioactive waste, or other waste disposal facility. All facilities to which such waste is transported must be eligible to accept Superfund waste under 40 CFR § 300.440. The Property Owner shall provide written notice to EPA and DEQ prior to any out-of-state shipment of waste.

4.2 *Excavation of Soil in Lieu of Radon Mitigation Requirements.* For any building or structure constructed on the Property, the Property Owner may avoid the requirements set forth in section 3 of this Easement and Equitable Servitude by excavating from the building area all radium contaminated soil in accordance with the requirements of Exhibit C to this Easement and Equitable Servitude. If a Property Owner makes this election, it shall provide EPA, DEQ and the City written notice of the election at least 60 days before submitting the remedial design work plan required by Exhibit C. Unless and until the Property Owner provides EPA, DEQ and the City subsequent notice that it is withdrawing the election, it shall proceed according to the requirements of Exhibit C for the area subject to the election. Any buildings constructed in areas meeting the performance standards specified in Exhibit C for clean building areas shall be exempt from the requirements of section 3 of this Easement and Equitable Servitude. Any areas of the Property where soil is placed in berms or otherwise not removed will remain subject to radon resistant control building requirements set forth in Section 3 above.

5. Record Keeping and Reporting

5.1 *Records.* The Property Owner shall keep records of required radon testing, radon control system maintenance and inspection logs. The testing results must identify the building address and ownership and shall include a description of the reason for radon sampling (i.e. for

occupancy, results of prior sampling, changes in building or HVAC configuration, etc). Where results exceed the Indoor Air Standard, the information shall include a description of measures taken to modify the radon system to reduce concentrations and the retest results showing compliance with the standard. A copy of these records and any records required by Exhibit C, if applicable, must be maintained on the Property or be electronically accessible at the Property and must be readily available for inspection by building occupants and representatives of the Grantee, the City of Millersburg, EPA, DEQ and other governmental agencies having applicable jurisdiction.

5.2 *Reporting.*

5.2.1 The Property Owner shall submit to the City copies of all radon testing results within 60 days of Property Owner's receipt of the results. When the testing results exceed the Indoor Air Standard, the report shall include a description of measures taken to reduce concentrations of radon and the results of retesting showing compliance with the Indoor Air Standard. The report shall identify the building address and ownership and shall describe the reasons for the testing.

5.2.2 At least 90 days before each fifth anniversary of the date of this Easement and Equitable Servitude, beginning the first year after occupancy of any building on the Property, the Property Owner shall submit to the City a report documenting the inspections required by this Easement and Equitable Servitude and the reports described in the preceding section.

6. Environmental Protection Easement. Grantor hereby grants to the Grantee an irrevocable, permanent and continuing nonexclusive easement ("Easement") for access on, over and across the Property, and Grantee, EPA and DEQ shall have the right to enter upon any portion of the Property at all reasonable times, for purposes of:

6.1 Implementing the response actions in the ROD, including but not limited to the requirements set forth in section 3 of this Easement and Equitable Servitude;

6.2 Verifying any data or information submitted to Grantee, EPA or DEQ;

6.3 Verifying that no action is being taken on the Property in violation of the terms of this Easement and Equitable Servitude;

6.4 Monitoring response actions on the Property and conducting investigations relating to contamination on or near the Property including, without limitation, sampling of air, water, sediments and soils, and specifically, without limitation, obtaining split or duplicate samples;

6.5 Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations; and

6.6 Implementing additional or new response actions if EPA, in its sole discretion, determines i) that such actions are necessary to protect the environment because either the original remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more

efficient or cost effective manner; and ii) that the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

7. Enforcement

7.1 *Effect of Violation:* Violation of any condition or restriction contained in this Easement and Equitable Servitude shall give to the Grantee, EPA, and DEQ, the right, privilege and license to enter upon the Property where such violation exists and to abate, mitigate, or cure such violation at the expense of the Property Owner, provided written notice of the violation is given to the Property Owner describing what is necessary to cure the violation and the Property Owner fails to cure the violation within the time specified in such notice. Any such entry by the Grantee, EPA or DEQ shall not be deemed a trespass, and neither the Grantee, EPA nor DEQ shall be subject to liability to the Property Owner for such entry and any action taken to abate, mitigate, or cure a violation.

7.2 *Grantee.* The Grantee shall be entitled to enforce the terms of this Easement and Equitable Servitude by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including the rights by EPA and DEQ to enforce their respective environmental and/or public health laws.. Any forbearance, delay or omission by the Grantee, EPA or DEQ to exercise or enforce their respective rights under this Easement and Equitable Servitude in the event of a breach of any term of this Easement and Equitable Servitude shall not be deemed to be a waiver of such term or of any subsequent breach of the same or any other term, or of any of the rights under this Easement and Equitable Servitude. Grantee shall be entitled to recover damages for violations of the terms of this Easement and Equitable Servitude, and EPA and DEQ, may recover damages or seek other relief for any injury to the remedial action, to the public or to the environment protected by this Easement and Equitable Servitude.

7.3 *City.* At such time as the City is no longer the owner of legal and equitable title to all or a portion of the Property, the Easement shall automatically become for the benefit of the City (and shall continue to run for the benefit of the Grantee), and all the rights and benefits owed to the Grantee under this Easement and Equitable Servitude shall also be owed to the City in addition to the Grantee with respect to that portion of the Property not owned by the City. The City shall have the same rights and privileges as the Grantee with respect to such portion of the Property not owned by it, including all rights to enforce the terms of this Easement and Equitable Servitude. In the event that the Property Owner violates any requirement of this Easement and Equitable Servitude, the Property Owner shall defend, indemnify and hold harmless the City and the Grantee from and against all claims, liabilities, damages, losses, costs and expenses incurred or suffered by the City as a result of such violation and accruing after the date the City is no longer the owner of legal and equitable title to a portion of the Property, including without limitation any penalties, stipulated penalties or agency oversight costs for which the City may become liable pursuant to the Consent Decree.

8. General Terms.

8.1 *Reservation of Rights.* Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted in this Easement and Equitable Servitude.

8.2 *No Limitation on EPA or DEQ.* Nothing in this Easement and Equitable Servitude shall limit or otherwise affect EPA or DEQ's rights of entry and access or EPA or DEQ's authority to take response actions under CERCLA, the National Contingency Plan or other state or federal law.

8.3 *No Public Access and Use.* No right of access or use by the general public to any portion of the Property is conveyed by this Easement and Equitable Servitude.

8.4 *Notice requirement:* The Property Owner agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND EASEMENT AND EQUITABLE SERVITUDE OF RESTRICTIVE COVENANTS, DATED _____, 20____, RECORDED IN THE PUBLIC LAND RECORDS ON _____, 20____, IN BOOK _____, PAGE _____.

Within 30 days of the date any such instrument of conveyance is executed, the Property Owner must provide Grantee, EPA and DEQ with a certified true copy of the instrument and, if it has been recorded in the public land records, its recording reference.

8.5 *Administrative jurisdiction.* The federal and state agencies having administrative jurisdiction over the environmental protections which this Easement and Equitable Servitude is designed to preserve are EPA and DEQ.

8.6 *Waiver of certain defenses.* The Property Owner hereby waives any defense of laches, estoppel, or prescription.

8.7 *Covenants:* Grantor hereby covenants to and with Grantee and its assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, except those noted on Exhibit B attached hereto, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

8.8 *Notices.* Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: Clayton Wood, Mayor
City of Millersburg
4222 NE Old Salem Road
Albany, Oregon 97321

To Grantee: James H. Denham
Legal Counsel
TDY Industries, Inc.
1600 NE Old Salem Road
PO Box 460
Albany, OR 97321-0460

To EPA: Remedial Project Manager for
Teledyne Wah Chang Albany Superfund Site
Environmental Cleanup Office
U.S. Environmental Protection Agency Region 10
1200 Sixth Avenue, ECL-111
Seattle, Washington 98101

To DEQ: Project Manager
Teledyne Wah Chang Albany Superfund Site
Oregon Department of Environmental Quality
1102 Lincoln St., Suite 210
Eugene, Oregon 97401

If mailed, a notice shall be deemed effective on the second day after deposited as registered or certified mail, postage prepaid, directed to the other party at the address shown above. Any party may change its person and address for notices by giving written notice of the change to the other parties.

8.9 *Controlling Law.* The interpretation and performance of this Easement and Equitable Servitude shall be governed by the laws of the United States, or if there are no applicable federal laws, by the law of the state of Oregon.

8.10 *Liberal construction.* Any general rule of construction to the contrary notwithstanding, this Easement and Equitable Servitude shall be liberally construed in favor of the grant to effect the purpose of this Easement and Equitable Servitude and policy and purpose of CERCLA. If any provision of this Easement and Equitable Servitude is found to be ambiguous, an interpretation consistent with the purpose of this Easement and Equitable Servitude that would render the provision valid shall be favored over any interpretation that would render it invalid.

8.11 *Severability.* If any provision of this Easement and Equitable Servitude, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement and Equitable Servitude, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

8.12 *Entire Agreement.* This Easement and Equitable Servitude sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

8.13 *No Forfeiture.* Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

8.14 *Successors.* The covenants, terms, conditions, obligations and restrictions of this Easement and Equitable Servitude shall be binding upon and inure to the benefit of the Grantor as owner of the Property and Grantee as holder of the Easement, and the respective personal representatives, heirs, successors, and assigns of Grantor as owner of the Property and Grantee as holder of the Easement and shall be appurtenant to, and continue as a servitude running in perpetuity with, the Property. The term "Grantor" and any pronouns used in place thereof shall include the City of Millersburg, and its successors and assigns. The term "Grantee" and any pronouns used in place thereof shall include TDY Industries, Inc. and its successors and assigns, as holder of the Easement, and, at such time as the City is no longer the owner of any portion of the Property, the City, and its respective successors and assigns, as holder of the Easement. The rights of the Grantee and Grantor under this Easement and Equitable Servitude are freely assignable, subject to the notice provisions hereof. Any transferee of the Property shall automatically be deemed, by acceptance of title to the Property, to have assumed all of the obligations set forth in this Easement and Equitable Servitude relating to the Property. The transferor shall, when such transfer is consummated, be relieved of all liability that arises thereafter under this Easement and Equitable Servitude, but such transferor shall not thereby be relieved of liability that arose before such time and which remains unsatisfied. The term "Property Owner," and any pronouns used in place thereof, initially shall mean the City; after the City is no longer the owner of equitable and legal title to any portion of the Property, the term "Property Owner," and any pronouns used in place thereof, shall mean any person who owns legal or equitable title to any portion of the Property and the obligations of the Property Owner shall apply to that person with respect to the portion of the Property that person owns. "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform and of the functions or to exercise any of the powers currently performed or exercised by DEQ. "EPA" means the United States Environmental Protection Agency, and its employees, agents, and authorized representatives. "EPA" also means any successor or assign of EPA under the laws of the United States, including but not limited to any entity or instrumentality of the United States authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by EPA.

8.15 *Termination of Rights and Obligations.* A party's rights and obligations under this Easement and Equitable Servitude terminate upon transfer of the party's interest in the Easement

or Property, as the case may be, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

8.16 *Captions.* The captions in this Easement and Equitable Servitude have been inserted solely for convenience of reference and are not a part of this Easement and Equitable Servitude and shall have no effect upon construction or interpretation.

TO HAVE AND TO HOLD unto Grantee and its assigns forever.

IN WITNESS WHEREOF, Grantor has caused this Agreement to be signed in its name.

Executed this _____ day of _____, 200__.

GRANTOR:

CITY OF MILLERSBURG, OREGON

By: _____
Name: _____
Title: _____

This Easement and Equitable Servitude is accepted this _____ day of _____, 200__.

GRANTEE:

TDY INDUSTRIES, INC.

By: _____
Name: _____
Title: _____

STATE OF OREGON)
) ss.
County of)

The foregoing instrument is acknowledged before me this _____ day of _____,
200_, by _____, the _____ of CITY OF MILLERSBURG,
OREGON.

Notary Public for Oregon

STATE OF WASHINGTON)
) ss.
County of)

The foregoing instrument is acknowledged before me this _____ day of _____,
200_, by _____, the _____ of TDY INDUSTRIES, INC.,
on its behalf.

Notary Public for Oregon

SOV Exhibit B

CITY OF MILLERSBURG RADON ORDINANCE

Section 4.810 Radon Sub-Zone - E

(1) Purpose. The purpose of the Radon sub-zone is to promote the public health, safety and welfare by preventing migration of radon from the soil to indoor air in amounts that exceed EPA standards and to promote industrial development of such areas consistent with Statewide Planning Goal 9, "Economic Development," and the acknowledged Millersburg Comprehensive Plan.

(2) Area Subject to the Radon sub-zone. The City shall record a notice in the Linn County public records that legally describes the area subject to the Radon sub-zone, including a map showing the area's boundaries, state that the area is subject to the requirements of the Radon sub-zone and that the Radon sub-zone requires radon resistant construction methods and testing. The provisions of this section 4.810 shall apply to all areas described in the recorded notice and map.

(3) Allowed Methods of Addressing Radium Contamination. An applicant may elect to address radium contamination by one of the three following methods:

(A) Use radon-resistant construction methods in accordance with section (4)(b)(i), below.

(B) Obtain prior EPA approval that the levels of radon in the buildings will be less than the Indoor Air Standard for buildings for which radon controls are not appropriate (such as open-sided sheds and parking structures). Under this method of addressing radium contamination, applicants must demonstrate to EPA's satisfaction through estimates of indoor radon concentration, using methods approved by EPA and parameters which match the particular buildings to be constructed. If this demonstration is made to EPA's satisfaction, the City may approve building permits for the building without requiring radon-resistant construction methods or soils excavation. Any subsequent changes to the building require a new land use permit under section 4.810 to ensure that the change in the building would not change the assumptions used in the initial modeling, or to update the modeling to EPA's satisfaction. All costs associated with obtaining EPA approval for buildings to be constructed other than with radon-resistant construction methods shall be borne solely by the applicant.

(4) Process for Land Use and Building Permits.

(A) Application and Land Use Permit Approval.

(i) An approved land use permit shall be required prior to approval of a building permit issued pursuant to section (4)(B), below.

(ii) The applicant for such permit shall submit to the City Recorder the following, which shall constitute a complete application:

- (a) Any fee required by the City Council.
- (b) Any completed and signed application form required by this ordinance.
- (c) A site plan drawn to scale showing all proposed principal and accessory structures and their proposed uses and such other information as the City Recorder may require.
- (d) An election of one of three alternative methods of addressing radium and a written description of how radium will be addressed under the elected method.

(iii) The City Recorder shall determine that the application is complete and, if not, shall advise the applicant in writing what information is missing pursuant to section 2.070 of this ordinance.

(iv) The City Recorder shall give notice of a complete application pursuant to section 2.080 of this ordinance except that:

(a) The notice shall specify that any party may provide written comments on the application to the City Recorder within ten (10) days of the notice's mailing date; and

(b) The notice shall specify which method of addressing radium contamination has been elected by the applicant. The City shall give notice to the EPA. If the applicant changes its election of method addressing radium contamination, the City shall give EPA an amended notice.

(v) The City Recorder may approve or deny the application after the written comment period in section (4)(A)(iv), above, has ended. The City Recorder may impose conditions as the City Recorder determines are appropriate; however, at a minimum, an approval under section (3)(A) for radon resistant construction methods shall include the following conditions:

(a) No building permit shall be issued pursuant to section 2.050 of this ordinance unless it complies with section (4)(B)(i), below.

(b) No final certificate of occupancy shall be issued until radon tests satisfactory to the City have been conducted and show that indoor radon levels in all principal and accessory structures are below the Indoor Air Standard. The Indoor Air Standard shall be 4 pCi/liter or EPA's published target level or promulgated standard in effect at the time for indoor radon for occupational exposure, whichever is stricter. All

radon testing shall be conducted in conformance with EPA's published radon testing guidance in effect at the time the tests are conducted. If radon concentrations exceed the Indoor Air Standard in effect at the time, building owners shall be required to put in place additional radon controls and shall conduct additional testing until retesting shows that concentrations are below the standard. Such additional testing, and controls if necessary, shall also be required after major structural changes are made to the building or its HVAC system that could affect the effectiveness of the radon controls. Once testing shows that the radon concentrations meet the Indoor Air Standards, the City may issue a final certificate of occupancy for the building.

(c) The condition required in section (4)(A)(v)(b), above, shall be satisfied within six (6) months of the issuance of a temporary certificate of occupancy. The City Recorder may grant reasonable extensions if the applicant makes a written request and demonstrates good cause.

(d) Building owners and lessees shall be required to maintain the radon control system in proper working order. Satisfactory maintenance shall, at a minimum, conform to maintenance requirements set forth in the Large Building Guidance, or updated EPA guidance.

(e) At least once every five years, buildings shall be inspected for slab settling, floor or basement wall cracks and other conditions that may reduce the effectiveness of the radon-resistant construction. If such conditions are found during the inspection, the affected buildings must be tested for radon using EPA-approved sampling methods. Building owners and lessees shall be required to take appropriate actions to reduce radon concentrations if radon levels in buildings exceed the Indoor Air Standard in effect at the time.

(f) All radon testing results shall be submitted to the City. All testing results must identify the building address and ownership and shall include a description of the reason for radon sampling (i.e. for occupancy, results of prior sampling, changes in building or HVAC configuration, etc). Where results exceed the Indoor Air Standard, the information shall include a description of measures taken to modify the radon system to reduce concentrations and the retest results showing compliance with the standard. Records of radon testing, radon system maintenance, and inspection logs shall be kept on site or be electronically accessible on site and must be readily available for inspection by building occupants, and/or representatives of the City, EPA, or DEQ.

(g) Building owners and lessees shall provide notifications to building occupants in writing or electronically that the building they occupy needs radon controls for potential risk reduction. Such notification shall include, at a minimum, a posted notice in a prominent place within the building. Content of the notification to building occupants shall include information on the location of the site records, the radon controls that are in place at the site, and the reasons for the radon controls.

(vi) An appeal of the City Recorder's decision in section (4)(A)(v), above, shall be pursuant to sections 2.090 and 2.100 of this ordinance.

(B) Building Permit. All building permits approved under a land use approval for radon resistant construction methods under section (3)(A) must comply with the following:

(i) All principal and accessory structures shall use radon resistant construction methods consistent with the most current edition of the EPA publication entitled "Radon Prevention in the Design and Construction of Schools and Other Large Buildings" (June, 1993)(EPA625-R-92-016) or the latest adopted edition of the "State of Oregon Structural Speciality Code", whichever the City Recorder determines, pursuant to section 2.040 of this ordinance, provides greater radon resistant construction methods. Construction will utilize either: (1) active systems such as active soil depressurization ("ASD") or building pressurization or (2) passive soil depressurization combined with sealing of radon entry routes. ASD consists of a layer of coarse aggregate below the building slab, radon suction pits below the slab, vent pipes and suction fans. If passive soil depressurization is used, the system consists of the same components as ASD except for the fans, but will include a rough-in for the addition of fans to convert it to ASD if necessary. Sealing of radon entry routes shall be done using the methods described in the EPA guidance or using a gas-impermeable membrane.

(ii) No building permit shall be issued pursuant to section 2.050(1) of this ordinance unless an approval has been granted pursuant to section (4)(A), above.

(iii) The City Recorder may issue a temporary certificate of occupancy prior to a final certificate of occupancy.

(5) Residential Development Prohibited. Residential development shall be prohibited in the Radon sub-zone.

SOW Exhibit C

CITY OF MILLERSBURG, OREGON CONSENT DECREE

Exhibit C to Scope of Work

**Requirements for Remedial Design and Remedial Action (RD/RA) for
Soil Removal or Berming.**

Introduction:

As provided in II.B of the Scope of Work to which this Exhibit C is attached (the "SOW"), the City of Millersburg (the "City") may elect to proceed under this Exhibit C in lieu of other remedial strategies described in the SOW. This Exhibit C describes the requirements for excavating soil containing contamination and either disposing of that soil offsite or consolidating it in berms for management onsite. At the completion of the work described in this Exhibit C, areas from which contamination is removed, and for which confirmation sampling documents the removal, will be deemed to be clean areas not requiring further remedial measures. Areas where excavated soil is consolidated on site will remain subject to the requirements described in the SOW. If the City elects to proceed under this Exhibit C, excavation and removal or berming soil will be performed in accordance with this document and CERCLA RD/RA practices as outlined in EPA's then-current guidance on RD/RA. It is the responsibility of the City to follow the process, and submit the information and submittals required by EPA. This Exhibit C has no effect and imposes no requirement on the City or any subsequent property owner unless and until the City or property owner expressly elects to proceed under Section II.B of the Scope of Work. Earth moving and site grading activities associated with development or construction do not constitute excavation activities subject to this Exhibit C.

EPA and ODEQ ("the agencies") or their designees will provide oversight of the process and the excavation.

The City of Millersburg shall reimburse the agencies for the costs of such oversight.

If the Soil Amendment Area is to be excavated, excavation must be completed within 10 years of signing this Consent Decree. All areas of the Soil Amendment Area which will require excavation must be excavated as one Remedial Action. The EPA and ODEQ shall not oversee multiple excavations over multiple years.

The following describes the process, and the information and submittals required by the agencies. The complexity of these documents should be commensurate with the activities to be performed. With EPA's approval, document requirements may be combined or modified. The deliverables shall be submitted as drafts and finals. The City shall address the agencies' comments on the draft submittals in a memorandum which either responds to the agencies' questions or indicates how those comments will be incorporated into the final documents. The City's responses to those comments will either be approved, or the agencies will provide comments requiring further revision by the City. Following EPA's approval of the City's

responses to comments, documents shall be revised in accordance with the comments and resubmitted as final documents.

A.1_ Performance Standards

A.1.1 Standard for Cleaned Area.

Soil in the cleaned area must achieve a concentration of radium in the soil that is indistinguishable from background.

A.1.2 Confirmation Sampling.

Confirmation sampling following excavation must be in accordance with a sampling strategy that statistically ensures that a building lot meets the performance standard specified above. A sample grid spacing will be required to ensure that there is no remaining "hot spot" of sufficient size to cause radon in the future building to exceed the action level. The sampling strategy will be outlined in a Sampling and Analysis Plan as specified in A.2.1.2 below. A rigorous, statistically based sampling program will be required to make such demonstration. The sampling program must be developed using the methodology described in **Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) Rev 1 August 2000, EPA. 402-R-97-016** (or another document acceptable to EPA).

A.1.3 Bermed Areas

Bermed soil must be covered with a geo-fabric and a clean soil cover to ensure that the bermed soil is contained. The soil cover must be deep enough to protect the integrity of the geo-fabric from root penetration or from other damage from vegetation planted on the soil cover. The cover system must:

- a) Function with minimal maintenance;
- b) Promote drainage and minimize erosion or abrasion;
- c) Accommodate settling and subsidence so that the cover's integrity is maintained.

A.2 Remedial Design

A.2.1 Remedial Design Planning

A.2.1.1 RD Work Plan

The City shall prepare and submit to EPA and ODEQ a Remedial Design (RD) Work Plan that includes a comprehensive description of the excavation, removal and berming action, any additional data collection and evaluation activities to be performed, and the plans and specifications to be prepared. A schedule for completion of each major activity and submission of each deliverable shall also be included. If data collection will be undertaken as part of the

RD, a Sampling and Analysis Plan including Field Sampling Plan, Quality Assurance Project Plan, and a Health and Safety Plan shall be prepared.

The Work Plan shall present the following:

- a) A statement of the objectives of the RD/RA;
- b) A list and description of the tasks to be performed, information needed for each task, information to be produced during and at the conclusion of each task, and a description of the work products that will be submitted to EPA;
- c) A schedule for the design with specific dates for completion of each required activity and submission of each deliverable;
- d) A project management plan, including a data management plan, provision for reports to EPA and ODEQ, and meetings and presentations to EPA and ODEQ at the conclusion of each major phase of the RD/RA.

A.2.1.2 Sampling and Analysis Plan

A Sampling and Analysis Plan (SAP) will ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols, and that the data generated will meet the Data Quality Objectives (DQOs) established. The SAP will include a Field Sampling and Analysis Plan (FSAP) and a Quality Assurance Project Plan (QAPP).

The FSAP will define in detail the sampling and data-gathering methods that will be used on the project. It will include sampling objectives, sample location (horizontal and vertical) and frequency, sampling equipment and procedures, and sample handling and analysis. The QAPP will describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that will be used to achieve the desired DQOs. The DQOs will, at a minimum, reflect use of analytical methods for obtaining data of sufficient quality for this project. In addition, the QAPP will address personnel qualifications, sampling procedures, sample custody, analytical procedures, and data reduction, validation, and reporting.

The City will demonstrate in advance and to EPA's satisfaction that each laboratory it may use is qualified to conduct the proposed work. The agencies may require that the City submit detailed information to demonstrate that the laboratory is qualified to conduct the work, including information on personnel qualifications, equipment and material specification, and laboratory analyses of performance samples (blank and/or spike samples).

A.2.1.3 Health and Safety Plan

A Health and Safety Plan shall be prepared in conformance with applicable occupational safety and health regulations and protocols. The Health and Safety Plan will include a health and safety risk analysis, a description of monitoring and personal protective equipment, medical monitoring, and provisions for site control. The agencies will not approve the City's Health and

Safety Plan, but rather will review it to ensure that all necessary elements are included, and that the plan provides for the protection of human health and the environment.

A.2.2 Remedial Design

In general, the design will begin upon EPA's final approval of the RD Work Plan. In accordance with the design management schedule established in the accepted Remedial Design Work Plan, the design will consist of the documents which follow.

A.2.2.1 Results of Any Data Acquisition Activities

Data gathered during the project planning phase shall be compiled, summarized, and submitted to EPA along with an analysis of the impact of the results on design activities. In addition, surveys conducted to establish topography, rights-of-way, easements, and utility lines will be documented. Utility requirements and acquisition of access, through purchases or easements, that are necessary to implement the RA will also be discussed.

A.2.2.2 Design Criteria

The concepts supporting the technical aspects of the design will be defined in detail and presented in the design report. Specifically, the Design Report shall include the design assumptions and parameters for all elements of the design

A.2.2.3 Plans and Specifications

Construction drawings and specifications for all components of the Remedial Action will be prepared and presented.

A.2.2.4 Permitting Requirements

All activities must be performed in accordance with the requirements of all applicable federal and state laws and regulations.

A.2.2.5 Documentation of Institutional Controls

Any excavated soil that is not removed to an offsite disposal facility shall be placed in controlled berms on site. If soil is bermed, the areas with the bermed soil shall be mapped. The map shall note the location and dimensions, including depth of the bermed material with respect to permanently surveyed benchmarks. The map shall be updated annually if changes are made to the berms. The map shall be completed and placed in the City's files within 60 days of the completion of the creation of berms or substantial changes to the berms.

A.2.2.6 Design Analyses

The evaluations conducted to select the design approach will be described. Design calculations will be documented.

A.2.2.7 Construction Schedule

The Construction Schedule for construction and implementation of the remedial action shall identify timing for initiation and completion of all critical path tasks.

A.2.2.7 Performance Standards Verification Plan

The Performance Standards Verification Plan (PSVP) shall describe the sampling and analyses needed to ensure that the soil excavation performance standards are met. The PSVP will include

a Sampling and Analysis Plan as described in A.1.2 and A.2.1.2 to describe the necessary sampling strategy and statistics, sampling protocols, and quality assurance necessary to ensure that the excavation requirements are met.

A.3 Remedial Action

A.3.1 Remedial Action Planning

The remedial action (RA) planning documents shall be submitted to the agencies in draft and final for their review. Upon EPA approval of the Final RD and the Final RA Work Plan, the City shall implement the RA Work Plan in accordance with the construction management schedule. The City shall not undertake significant field changes to the RA as set forth in the RA Work Plan and Final Design without EPA's approval. The RA shall be documented in enough detail to produce as-built construction drawings after the RA is complete.

A.3.1.1 RA Work Plan

The City shall submit to the agencies for review and EPA's approval a Work Plan which provides a detailed plan of action for completing the RA activities. The objective of this Work Plan is to provide for the safe and efficient completion of the RA. The Work Plan will include elements of construction management, construction quality assurance, and Health and Safety. The Work Plan will include a comprehensive description of the work to be performed and the Final Construction schedule for completion of each major activity and submission of each deliverable.

Specifically, the Work Plan shall present the following:

- a) A detailed description of the tasks to be performed and a description of the work products to be submitted to the agencies.
- b) A schedule for completion of each required activity and submission of each deliverable required by this SOW.
- c) A project delivery strategy describing the strategy for delivering the project. This will address the management approach for implementing the Remedial Action, including procurement methods and contracting strategy, phasing alternatives, and contractor and equipment availability concerns.
- d) A construction management plan to indicate how the construction activities are to be implemented and coordinated with the agencies during the RA. The City will designate a person to be a RA Coordinator and its representative on-site during the RA, and identify this person in the Plan.
- e) A construction quality assurance program to complete the RA within all design criteria, plans and specifications, and performance standards. This document will also provide for the implementation of the PSVP.
- f) A construction Health and Safety Plan or plan addendum consistent with A.2.1.3 of this Attachment that complies with applicable occupational safety and health regulations and protocols.

- g) A dust control plan for control of dust during construction.
- h) A spill control plan.
- i) Draft Operation and Maintenance Plan for bermed soil (as described in A.4).
- j) A Sampling and Analysis Plan or plan addendum consistent with A.2.1.2 of this Attachment for all sampling and analysis to be conducted as part of the RA.

A.3.1.5 Transport and Disposal Plan (as required)

The City shall prepare a Transport and Disposal Plan in accordance with 40 CFR § 300.440 (the "Offsite Rule") for contaminated material that is to be removed, transported and disposed at an approved RCRA, low level radioactive waste, or other waste disposal facility. All facilities to which such waste is transported must be eligible to accept Superfund waste under the Offsite Rule. (An ongoing list of EPA-approved waste disposal sites will be maintained to allow disposal of waste as generated.) The City shall provide written notice to the agencies prior to any out-of-state shipment of waste;

A.3.2 Remedial Action Construction

The City shall implement the RA as detailed in the accepted final design and shall complete the following activities as required in constructing the RA.

A.3.2.1 Preconstruction Conference

A preconstruction conference shall be held before initiation of construction. This conference will include the Property Owner, the City and federal, state, and local government agencies and will:

- a) Define the roles, relationships, and responsibilities of all parties;
- b) Review methods for documenting and reporting inspection data;
- c) Review methods for distributing and storing documents and reports;
- d) Review work area security and safety protocols;
- e) Review the construction schedule;

The preconstruction conference must be documented and must include names of people in attendance, issues discussed, clarifications made, special instructions issued, etc.

A.3.2.2 Pre-final Construction Inspection (as required)

Upon preliminary project completion, the City shall notify the agencies for the purpose of conducting a pre-final construction inspection. Participants should include the project coordinators, supervising contractor, construction contractor, and other federal, state, and local agencies with a jurisdictional interest. The pre-final inspection will consist of a walk-through inspection of the entire project site. The objective of the inspection is to determine whether the construction is completed. Any outstanding construction items discovered during the inspection will be identified and noted. The pre-final construction inspection report will be submitted to the agencies by the City which outlines the outstanding construction items, actions required to resolve the items, completion date for the items, and an anticipated date for the final inspection.

A.3.2.3 Final Construction Inspection

Upon completion of all outstanding construction items, the City will notify the agencies for the purpose of conducting a final construction inspection if required. The final construction inspection will consist of a walk-through inspection of the entire project site. The pre-final construction inspection report will be used as a check list with the final construction inspection focusing on the outstanding construction items identified in the pre-final construction inspection. Any outstanding construction items discovered during the inspection still requiring correction will be identified and noted. If any items are still unresolved, the inspection will be considered to be a pre-final construction inspection requiring another pre-final construction inspection report and subsequent final construction inspection.

A.3.2.4 Remedial Action Report

Within sixty (60) days following the conclusion of the final construction inspection, the City shall submit a draft construction report to the agencies. The agencies will review the draft report and will provide comments to the City. The final construction report, which will be due to the agencies 15 working days following the City's receipt of those comments, will include the following:

- a) Brief description of how outstanding items noted in the pre-final inspection were resolved;
- b) Explanation of modifications made during the RA to the original RD and RA Workplans and why these changes were made;
- c) As-built drawings.
- d) Synopsis of the construction work defined in the SOW and certification that the construction work has been completed.

A.3.2.5 EPA Approval

Upon approval of the final construction report, EPA shall issue a letter to the City and the Property Owner stating that the buildings may be constructed in the area where the excavation has been completed without being subject to any radon control or monitoring requirements.

A.4 Operation and Maintenance For Bermed Soil

If soil is bermed, then upon acceptance by EPA of the Operation and Maintenance Plan, the City shall implement the Operation and Maintenance Plan in accordance with the schedule contained therein.

A.4.1 Operation and Maintenance Plan For Bermed Soil

If soil is bermed, operation and maintenance is required to ensure that the cap on the berms of contaminated soil is maintained and remains protective and to ensure the continued efficacy of the institutional controls on the berms. The City shall prepare an operation and maintenance plan (O&M Plan) which describes the necessary inspections and maintenance that will be needed to maintain the berms of radioactive soil and to verify the continued efficacy of the institutional controls on the berms. The O&M Plan shall require the City to:

- a) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion or other events;
- b) Prevent run-on and run-off from eroding or otherwise damaging the final cover;
- c) Protect and maintain surveyed benchmarks used to demarcate the bermed soil;
- d) Submit annual Maintenance Reports to the agencies outlining activities taken to maintain the cover during the previous year. The report shall be submitted by February 28th of the subsequent year. Reports shall be submitted annually until notification is made by EPA that they are no longer needed. Maintenance Reports shall be kept by the City in accordance with Section II of this SOW.

The draft O&M Plan will be submitted with the RA Work Plan. The final O&M Plan will be submitted with the draft remedial action report.

If necessary, the operation and maintenance plan will be modified to incorporate any design modifications implemented during the RA.

A.5 Reporting

A.5.1 Progress Reports

The City shall provide the agencies with signed, monthly progress reports during the design and construction phases. The reporting frequency may be modified with EPA's approval. The reports shall be prepared in letter format and shall include information on monthly activities, milestones achieved, problems encountered, and activities planned for the near future.

A.5.2 O&M Reports For Bermed Soil

The City shall prepare annual reports on activities conducted the previous year necessary to maintain the caps on the bermed contaminated soil and on the continued efficacy of the institutional controls applicable to the berms and shall maintain the annual reports in its files and make them available to the agencies for inspection.

A.5 Definitions

The following terms shall have the meanings set forth below. All other capitalized terms in this **Requirements for Remedial Design and Remedial Action (RD/RA) for Soil Removal or Berming** shall have the meanings set forth in the Consent Decree.

- A.5.1 EPA** means the United States Environmental Protection Agency or such successor federal agency to which jurisdiction is assigned with respect to matters governed by the Consent Decree.
- A.5.2 Soil Amendment Area** means the real property described in Exhibit A to the Easement and Equitable Servitude.
- A.5.3 Easement and Equitable Servitude** means the Easement and Equitable Servitude Covenants which the City is required by the Consent Decree to record in the deed records for the Soil Amendment Area.
- A.5.5 Property Owner** means any person who obtains a fee title interest in all or any portion of the Soil Amendment Area.
- A.5.6 ROD** means the Record of Decision Declaration, Decision Summary, and Responsiveness Summary for Final Remedial Action for Surface and Subsurface Soil Operable Unit, Teledyne Wah Chang Albany Superfund Site, Millersburg, Oregon as issued by the EPA on September 27, 1995.
- A.5.7 SOW** means the Scope of Work attached to the Consent Decree of which this Exhibit C is a part.
- A.5.8 ODEQ** means the State of Oregon Department of Environmental Quality or such successor State agency to which jurisdiction is assigned with respect to matters governed by the Consent Decree.

Attachments:

Exhibit A -- Legal Description of the Property

Exhibit B -- Exceptions to Title

Exhibit C -- Requirements for Remedial Design and Remedial Action (RD/RA)
for Soil Removal or Berming.

1997 Consent Decree